

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

February 22, 2010

Charles R. Fulbruge III
Clerk

No. 09-50555

Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff – Appellee

v.

JOHN PHILLIP MARTIN,

Defendant – Appellant

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:09-CR-71-1

Before HIGGINBOTHAM, CLEMENT, and SOUTHWICK, Circuit Judges.

PER CURIAM:*

John Phillip Martin pled guilty to three counts of mail fraud, in violation of 18 U.S.C. § 1341. The district court sentenced him to 40 months of imprisonment, which was within the Guidelines range of 33 to 41 months. On appeal, Martin argues the sentence is substantively unreasonable because it is greater than necessary to satisfy the goals of 18 U.S.C. § 3553(a). He contends that the district court inordinately punished him for the seriousness of his crime,

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

and did not account for either his personal history and characteristics or the circumstances surrounding the offense.

The district court made an individualized sentencing decision based on the facts of the case in light of the factors set out in Section 3553(a). *See Gall v. United States*, 128 S. Ct. 586, 596 (2007). The district court's conclusion that a sentence within the Guidelines is appropriate is entitled to deference, and we presume that it is reasonable. *See United States v. Campos-Maldonado*, 531 F.3d 337, 338 (5th Cir. 2008); *Rita v. United States*, 551 U.S. 338, 347 (2007). The district court was in a superior position to find facts and assess their import under Section 3553(a). We see no reason to disturb that court's discretionary decision to impose a sentence within the Guidelines range.

AFFIRMED.